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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 400

CHARLESTON FEDERAL SAVINGS & LOAN ASSOCIATION, FIRST FEDERAL SAVINGS & LOAN ASSOCIATION, WEST VIRGINIA BUILDING & LOAN ASSOCIATION, and EMPIRE FEDERAL SAVINGS & LOAN ASSOCIATION, *Appellants,*

vs.

GEORGE P. ALDERSON, State Tax Commissioner of West Virginia, *Appellee.*

REPLY BRIEF

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JARRETT PRINTING COMPANY, CHARLESTON, W. VA.

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REPLY BRIEF

THE ERRORS OF LOGIC OF THE COURT BELOW AND OF THE APPELLEE HEREIN

Appellants respectfully submit that the Supreme Court of Appeals of West Virginia has used reasoning which is *non sequitur*, and phraseology and terminology which is misleading, and that the Attorney General of West Virginia, in his brief on behalf of the Tax Commissioner, appellee herein, has followed the lead of that court.

In substance, the Supreme Court of Appeals of West Virginia, as well as the Attorney General, has stated that

although the Assessor of Kanawha County allowed a deduction from market value of approximately 30% in valuing the personal property of taxpayers in Class I, other than these appellants, he was in reality not giving a 30% "discount or deduction," but was merely using a formula to arrive at the correct "true and actual value" of these properties of other taxpayers, as required by the statute.

This is exemplified in the Supreme Court's opinion (S. J. 45), in the following sentence:

> "We do not have a case where the true and actual value was ascertained and a discount allowed from that value; but rather a case where the discount was allowed, particularly as to intangibles, in an effort to reach the true value."

On page 6 of his brief, the Attorney General, in subparagraph (4), states:

> "The discount as to intangibles was not allowed from the true and actual value, but was allowed from face value in an effort to reach true and actual value."

Again, at page 4 of the Attorney General's brief, he states:

> "The record discloses that the assessor, in valuing notes, open accounts, bonds, household goods, livestock, real estate, and other species of property, allowed generally a percentage deduction (approximately 30%) of the face value, book value, purchase value or cost value in order to arrive at true and actual value for assessment purposes (R. 58, 59, 60, 62). Such official did not allow a 30% deduction of true and actual value. On the contrary, the deduction allowed by him was to arrive at or determine what he believed to be the true and actual value."

We believe the illogical reasoning above is closely associated with the statement made on page 14 of the appellee's brief, in which he states:

> "The statutes relating to the valuation or assessment of money, notes, accounts, bonds, household goods, livestock and many other types of personal property owned by individuals set forth no specific method of ascertaining the value thereof which is comparable with the statute involved herein."

We respectfully submit that the error in reasoning of both the Supreme Court of Appeals of West Virginia and of the Attorney General is founded upon a misleading or misunderstanding of the statute herein involved, as well as the other statutes of West Virginia relating to the assessment and taxation of other property within Class I. This misunderstanding of the statute is particularly shown in the opinion of the Supreme Court of Appeals of West Virginia. That Court apparently failed to realize that the statute in question dealt with the *"capital stock"* of a building and loan association, and not with its *"assets"* or, as the Attorney General stated, with its *"property"*. So that there may be no misunderstanding, we again quote the pertinent part of Section 14(a) of Article 3, Chapter 11, as follows:

> "The CAPITAL of every building and loan association * * * as represented or evidenced by the investment shares and investment accounts in such association, shall be assessed at its *true and actual value*, according to the rules prescribed by this chapter, * * *. *The real and actual value* of such capital, represented by the market value of such investment shares and investment accounts as aforesaid, shall be ascertained according to the best information which the assessor may be able to obtain whether from any return made by such as-

> sociation * * * from actual sales of such investment shares and investment accounts, from answers to questions by the assessor * * *, or from other trustworthy sources."[1]

To show that the assessor also was required to determine the values of all other personal property for assessment purposes, in substantially the same manner, we quote the pertinent parts of Section 1, Article 3, Chapter 11, as follows:

> "*All property* shall be assessed annually * * * at its *true and actual value*; that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale, except that the true and actual value of all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants shall be arrived at by giving primary, but not exclusive, consideration to the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented. * * *."

We respectfully submit that there is no difference in substance in these two statutes, and that the assessor is required to fix the value of the *capital stock* of building and loan associations and the value of the property of all other taxpayers, at their *market value*, as closely as that can be ascertained.

With the two statutes in view, we believe the error in reasoning of the Supreme Court of Appeals of West Virginia becomes apparent. That Court stated (S. J. 40):

[1]All emphasis in this brief has been supplied by counsel, unless otherwise specifically stated.

> "Appellants have produced testimony tending to show that other classes of property, such as real estate, oil and gas properties, automobiles and household goods are assessed at less than their true and actual value in Kanawha County. WE THINK THIS TESTIMONY MUST BE DISREGARDED."

Here is the key to the illogical reasoning of the Supreme Court of Appeals of West Virginia. That court disregarded the testimony concerning a 30% minimum discount from cost or market value being given by the assessor, in arriving at assessment values for all of the properties of taxpayers which it mentions. It then sets forth the testimony of the Assessor of Kanawha County concerning his method of valuing money, accounts receivable, installment accounts, livestock and agricultural products, notes and bonds.

The Court then (S. J. 42) states:

> "We run into a situation impossible of solution when we attempt to make any comparison as between the assessments of live stock, agricultural equipment and farm products on the one hand, and *secured assets of a bank or building and loan association on the other.*"

There is the fallacy of reasoning. If the Court had realized that it was comparing the *market value* of live stock, farm products and agricultural equipment with the *market value* of the *capital stock* of building and loan associations, there was an immediate solution, and it was the failure to realize this that led that Court into its error.

The Court went on to state (S. J. 42, 43):

> "That the *assets* of the appellants are made up of high-grade securities will not be denied. There

> is and can be no reasonable doubt as to their being worth one hundred per cent of their face value. * * * Such a class of assets is, of course, clearly distinguishable from the ordinary run of notes and accounts. * * *"

The Court then (S. J. 43) goes on to state that as a practical matter you cannot get the absolute value of all property, but it fails to realize that the *market value* of practically all property can be and should be readily ascertainable.

The Court then (S. J. 44) went on to state that as to notes and accounts, assessors cannot attain perfection in their valuation and are driven to adopt a formula, and that "the results may not be entirely fair to other taxpayers." The Court then stated:

> "As has been stated above, the *assets* of each of the appellants were originally selected after the most rigid test as to its value, and care taken to guard against the fluctuation in values of properties securing such *assets*. Clearly, as relates to safety and security it is a different type of *property* from the ordinary note or account. Why, therefore, should we be asked to reduce an assessment below its true value, merely because as to other property, the value of which is uncertain, and by reason of its character cannot be accurately determined, assessing officers have, in good faith, adopted a plan for arriving at an estimated value?"

We think the error of the reasoning of the Supreme Court of Appeals of West Virginia now becomes plain. It attempted to see whether there was a difference in the market value of the bills and notes held by building and loan associations and the market value of those held by individuals, persons or corporations doing a small loan business, and the market value of other types of proper-

ties. The Court did not attempt to ascertain whether there was a discrimination between the valuations at *market value of the bills and notes, bonds and stockks*, held by other individuals and corporations with the *market value of the capital stock* of these appellants, as was required by the statutes, but instead attempted to compare the value of assets or property owned and held by building and loan associations with the values of other types of property owned by other individuals and corporations. This was the Court's real error, and was directly responsible for its erroneous, prejudiced and discriminatory opinion and decision.

It is well known to this Court that the book value of the assets of a corporation is no criterion as to the market value of its stock. In times of inflation, the market value of the stock frequently greatly exceeds the book value of the assets of a corporation, and in times of depression the book value of corporations frequently greatly exceeds the market value of the stocks of those corporations. Presumably the Legislature of West Virginia, when it enacted the respective tax statutes, was also aware of this.

The statutory requirement for fixing assessed values for the capital stock of building and loan associations is the price which that stock will bring in the open market. To ascertain if there has been a discrimination made, that market value of the capital stock of building and loan associations should be compared with the market value of all other properties in the same category, that is, the market value of not only bills and notes, stocks and bonds, but the market value of furniture, live stock, real estate, gas and oil, coal, and other similar property.

If, then, the assessor, after ascertaining the market value of all these other properties of other taxpayers, gives a deduction from the market value thereof before fixing the values for assessment purposes, and fails to

give an equal deduction from the market value of the capital stock of building and loan associations, before fixing these values for assessment purposes, *then a discrimination does exist.*

That the Attorney General of West Virginia, in his brief on behalf of the appellee herein, followed the error of the Supreme Court of Appeals of West Virginia, is shown on page 9 of his brief:

> "The *property* of a building and loan association is unquestionably of a distinctive class, and of a peculiar nature, as held by the court below * * *. The assessor, by applying the method of valuation prescribed in said section, ascertained the value of the *personal property* of appellants for the year in question, for taxation purposes."

and again on page 10:

> "The Assessor of Kanawha County valued the *properties* of appellants for taxation purposes * * *."

and

> "Appellants do not contend that the assessment for 1941 exceeds the true and actual value of their *property.* No claim is made that appellants' property is singled out * * *."

WAS DISCOUNT GIVEN OTHER TAXPAYERS, AND WERE APPELLANTS DISCRIMINATED AGAINST?

We respectfully submit that we can conclusively demonstrate to this Court, from the evidence in the record before it, that the Supreme Court of Appeals was in error, and likewise the Attorney General of West Virginia in his brief, in stating that the assessor, as to properties of taxpayers other than appellants, allowed the deduc-

tion of 30% *to arrive at* "true and actual value," rather than as we contend, *from* "true and actual value." We believe that we can conclusively prove from the evidence in the record that the assessor ascertained "market value," and then allowed a 30% deduction to arrive at "assessed value," and we respectfully submit that from the statutes in question "market value" and "true and actual value" are, and were meant by the Legislature of West Virginia to be, synonymous terms.

Even though it may be repetitious, we submit exact quotations from the evidence in the record to sustain our conclusions.

Under *cross-examination* by the attorney representing the Tax Commissioner, at the hearing before the County Court of Kanawha County, as shown at R. 144, Mr. Wilkinson, the deputy assessor in charge, was asked the following questions and made the following answers:

> "Q. Now, Mr. Wilkinson, in testifying that you assess different classes of property at various percentages of the true and actual value, is it not necessary *first to establish the true and accurate value* of such properties in order to determine the true and actual value at which you state you assess them?
>
> "A. We attempt to establish the cost price and then to establish our assessment value accordingly.
>
> "Q. It is necessary then to establish your true and actual value first, is it not, or what you consider as a proper value?
>
> "A. I will say 'a proper value', yes.
>
> "Q. Mr. Wilkinson, further with reference to the percentages of assessed value used by you in relation to the true and actual value, I believe that

you testified that you valued all accounts receivable at 70% of the face and installment accounts at 65% of the face or book value; live stock at 50% of the purchase value, if it could be established, and if not, it was left to the judgment of the deputy assessor who was assessing such property; and that you assessed bonds and notes at 70% of face value. What particular type of bonds did you have reference to or what bonds do you have here to assess?

"A. If I said face value I meant to say market value in the case of bonds. I have reference to bonds of private corporations, not United States bonds."

This shows conclusively, we submit, that the assessor did establish cost price or "market value" and then took a deduction therefrom, to ascertain the assessed valuations for the properties of all taxpayers other than the appellants.

The assessor himself stated that there was an attempt made by his office to give this 30% discount to taxpayers of the same class, and to do so uniformly. (See R. 148-149.)

"Q. * * * and you further testified that had you not used the values suggested and requested by the Tax Commissioner that the valuation would have been approximately 30% less than the valuation actually made against the properties of such associations for the year 1941. I will ask you how you determined that when, according to your testimony, you had not examined the returns, or at least the returns of some of these associations, for the year 1941?

"A. Because it has been our regular procedure, and we have attempted to adhere in our business in

> having *uniformity* between building and loan companies, shall loan companies, wholesale houses, garages, grocery stores, hotels, insurance agencies and various other offices and business of all kinds."

Again we think the evidence conclusively proves our contention, at R. 133:

> "Q. Mr. Wilkinson, I believe you have previously testified that your practice in Kanawha County was to assess property in general, with the exception of money, at about 70% of its *actual value*, or to allow a discount of approximately 30%, is that correct?
>
> "A. For intangibles, yes, sir.",

which is substantiated by other testimony of the same deputy assessor, at R. 56:

> "Q. A short time ago in testifying with respect to the Charleston Federal Savings & Loan Association and its return marked Exhibit No. 2, you stated that the deduction of 30% was in accordance with the method used in Kanawha County in assessing personal property, is that correct?
>
> "A. Not all classes of personal property, but intangibles, yes."

We will not repeat the testimony given by the assessor at R. 57, except that it is there conclusively shown, we submit, that a discount was given from the market value of cost price of certain classes of property by the assessor, which was a minimum discount of 30%, and that this discount was not given to arrive *at* "true and actual value," but was given *from* such value to arrive at the value for assessment purposes.

This is conclusively shown, we again submit, by the answer of the assessor that live stock "is valued at approximately 50% of the purchase price," and upon being

asked how that purchase price was ascertained, the assessor answered: "By asking the farmer what he paid for a plow or cattle or livestock * * *." (R. 57.)

When admittedly appellant's capital stock was valued at 100% of its market value, how can it be seriously contended there was no discrimination against these appellant taxpayers?

The appellee, at page 5, subparagraph (3), states:

> "The evidence does not disclose that Class I intangible property in Kanawha County for the year 1941 was assessed at less than its true and actual value.",

and this is a subparagraph under the main heading, "Findings of Fact by Supreme Court of Appeals of West Virginia." We respectfully submit that that statement is inaccurate, as shown above and even by the opinion of the Supreme Court of Appeals of West Virginia (S. J. 44):

> "In many instances notes and accounts worth full value may be assessed at less than their value and, in individual cases, a clear case of discrimination may be shown to exist.",

and at S. J. 45:

> "The more or less arbitrary allowance of the discount as to notes and accounts may have been an erroneous exercise of the duties of the assessor. *We think it was.*"

In any event, in neither the statutes nor Constitution of West Virginia can there be found any right or authority in the Supreme Court of Appeals of West Virginia to make findings of fact. We are sure there is no need to cite the many West Virginia cases to the effect that the Supreme Court of Appeals of West Virginia is solely an

appellate court (except in instances of original jurisdiction), and is bound by the facts decided by the statutory courts and fact-finding bodies below, unless those facts, from the record before the Court, clearly appear to be erroneous.

In this case, in any event, the West Virginia statutes provided for the County Court of Kanawha County, whose duty it was to hear the witnesses, consider the evidence, and decide the facts of the case. This Court is not composed of lawyers, but of lay persons, and the hearing of appeals from assessments is but one of its many statutory duties.

That fact-finding body, whose duty it was to find the facts, and who did find the facts in the instant case, held that the assessed valuations of the properties of the four protestants (now these appellants) "are in excess of the true and actual values of the respective properties of the said four protestants, respectively, *and that the assessed valuations aforesaid of the said properties of the said petitioners and protestants are at a proportionately higher assessment valuation than the properties of other property owners in Kanawha County, and are discriminatory and not uniform and equal,* * * *." (R. 43.)

And because of these findings of fact, the County Court reversed the findings made by the assessor at the express direction of the Tax Commissioner, appellee herein, and allowed these appellants the 30% discount or deduction which the assessor had stated he had given to all other similar taxpayers.

We therefore submit that the statement made in appellee's brief, at pages 4 and 5:

> "Counsel likewise assume that there has been a deliberate and intentional discrimination against

> appellants in the assessment of their property for the year 1941, notwithstanding the fact that the Supreme Court of Appeals of West Virginia expressly found to the contrary."

is an erroneous statement, in that the Supreme Court in West Virginia stated (S. J. 44):

> "On the record before us, we do not believe a *clear case* of discrimination has been shown."

and (S. J. 50):

> "Our holding goes no further than this: What has been shown with reference to the assessment of intangible property in Kanawha County, of types other than that owned by the appellants is insufficient to establish a case of discrimination, which would justify us in applying the principles announced in *West Penn Power Co.* v. *Board of Review and Equalization*, 112 W. Va. 442, 164 S. E. 862."

However, the Court did hold at S. J. 50:

> "Discrimination in the assessment of property of the same type, in the same taxing district *cannot be defended*, and we do not mean to defend such a practice in any sense. We think money and solvent securities should be assessed at their face value, and we think the *arbitrary practice of allowing a certain reduction from the face value of notes and accounts should be discontinued so far as possible*, * * *."

We therefore submit that in this case discrimination has been proven to exist, and as we show below, that it was an intentional and deliberate discrimination against the appellant taxpayers.

WAS THE DISCRIMINATION INTENTIONAL?

On page 14 of the appellee's brief, it is stated:

> "Even though certain other species of property may have been undervalued by the assessor for taxation purposes, appellants cannot complain in the absence of a showing of fraud, or a *general intentional system of valuation* designed to produce inequality. It is only in clear and hostile *intentional discrimination* against particular persons and classes, especially such as are of an unusual character, that the court will give relief.
>
> "There has been no showing in this case of any fraud or partiality on the part of the assessor or the state tax commissioner; no intention to discriminate between the property of the building and loan association and other species."

With this statement we again most respectfully disagree, and again submit that the evidence is conclusive that the discrimination was planned and intentional, and was made at the express direction of the Tax Commissioner, appellee herein, and over the objection of the Assessor of Kanawha County.

Even the Supreme Court of Appeals of West Virginia in its opinion so stated, in the following words (S. J. 42):

> "The testimony shows that the assessor in fixing the value of Class I property, employed a uniform and systematic plan as to the different types of property included in the general Class I classification: *Therefore, no question of error of judgment is involved.* WHAT THE ASSESSOR DID WAS INTENTIONAL AND FOLLOWED A PRECONCERTED PLAN, and, this being true, is discrimination against the appellants clearly shown?"

Again, turning to the record, the assessor (R. 73) stated that if he had followed the method in valuing appellants' capital stock, which he used in assessing the valuations for other personal property in Class I, and allowing the same percentage deductions therefrom, he would have arrived at different figures; and had he not received specific instructions from the Tax Commissioner's office to do otherwise, he would have arrived at those different figures, and would have valued the property of appellants at approximately 30% less.

When asked why he assessed the property of appellants at the figures at which he did, which were the amounts appealed from, the deputy assessor of Kanawha County stated (R. 54-55):

> "A. Because we received instructions from the Tax Commissioner's office to use these sheets and to make no changes in them whatsoever.
>
> "Q. Did you at first agree to accept those valuations as fixed by the State Tax Commissioner's office?
>
> "A. I did not agree at first, no, sir.
>
> "Q. Why did you later?
>
> "A. Because of *the order by the Tax Commissioner's office*, and I thought we had better probably do as he instructed."

And in view of his answer (R. 51) that he believed "the return (made by appellants) with the addition of the reserves *less than 30% discount* would be the more *equitable* assessment" for appellants' properties, we submit the issue of a purposeful and wilful discrimination is conclusively decided in favor of the appellants.

FURTHER REPLY TO APPELLEE'S BRIEF

On page 12 of appellee' brief, it is stated:

> "In referring to intangibles, such as notes and accounts, such official (assessor) stated that he allowed in this county (Kanawha) a discount of 30% from the face value thereof. He apparently was not referring to notes belonging to state and national banks because no discounts were allowed in their assessments."

Again, the error in reasoning, as to that which was the subject of taxation, is disclosed by that statement.

In Section 14(a) of Article 3, Chapter 11, Code of West Virginia, with reference to the taxation of banks, it is stated:

> "*Shares of stock* in a banking institution * * * shall be assessed * * *."

Therefore, the property underlying those shares of stock of banks, and the property underlying the capital, as represented by investment shares and investment accounts, of building and loan associations, cannot be considered for purposes of comparison; the only true comparison would be the market values of the respective shares of each such type of institution, and the assessed values thereof as fixed by the assessor.

The Supreme Court of Appeals of West Virginia, at S. J. 41-42, stated:

> "There is no showing (from the record in this case) as to the method employed in the assessment of the assets of trust companies and commercial banks, * * *."

As a matter of fact, the shares of stock in banks are assessing according to a very involved formula, worked

out by agreement between the banking institutions and the Tax Commissioner, and has no comparable basis to the assessing and taxing of either building and loan associations or the assessing and taxing of other property within Class I; and for that reason the evidence concerning such formula, and the manner of assessing the taxes on the shares of stock of banking institutions, is singularly lacking in the evidence, as at the time both parties undoubtedly considered it of no importance to the instant case, and as having no basis for comparison purposes in the instant situation.

Appellee, at pages 10 and 11 of his brief, cites the case of *Nashville, C. & St. L. Railway* v. *Browning*, 310 U. S. 362, 367, 84 L. Ed. 1254, 1257, as binding in the instant case.

We have heretofore in our main brief (pages 25-26) distinguished that case from the instant situation.

May we submit a further distinction. As stated in *Petersburg Gas Co.* v. *City of Richmond*, 132 Va. 82, 110 S. E. 533, 539, 28 L. R. A. 522, the word "value" has a peculiar meaning in determining the basis on which a *public service company* is entitled to return, and means only the amount upon which the return should be computed, not the *value* of the property as an income producing instrument, nor the *price* at which it would sell.

We think there is no need to cite authority that public utility corporations, such as Mr. Justice Frankfurter was discussing in the Nashville case, use one set of "values" for assessment purposes, which are always greatly lower than the set of "values" based on the same property, which are used in rate-making purposes. We respectfully submit that this Court probably had that thought in mind in deciding the Nashville case, that is, that the assessed values of public utilities are in practically no

instances their intrinsic worth or their sale price, or what would be termed under the West Virginia statute, their "true and actual values"; that, however, public utilities, for rate-making purposes, will use exactly the same properties and arrive at substantially higher figures upon which to base their charges to the public.

Therefore, the question which arose in the Nashville case, of a statutory body laying assessments upon public utilities, which were different from the assessments levied by county assessors upon other classes of property, we believe is a distinct and different problem from a county assessor, by order of a Tax Commissioner, levying different and discriminatory assessment and tax rates upon taxpayers in the same classification and category.

This, we submit, distinguishes the Nashville case from the present case, and is further proof of illegal and unconstitutional purposeful discrimination in the instant case, where none was said to exist in the Nashville case.

JURISDICTION

There is, of course, no contention by appellants but that Section 14(a) is on its face fair and constitutional, (as is Section 1); but these appellants contend that the interpretation of that statute by the Tax Commissioner of West Virginia, and this interpretation enforced, at his orders by the Assessor of Kanawha County, which interpretation and enforcement were sustained by the Supreme Court of Appeals of West Virginia, the court of last resort of that State, thereby makes that statute unconstitutional and deprives these taxpayers of their federal constitutional rights.

With reference to the subject of jurisdiction, we have heretofore filed a brief on that subject, and have therein

cited to this Honorable Court the cases wherein similar questions were heard upon appeal to this Court.

We have also printed for the use of this Court the "Memorandum Opinion" of the presiding Judge of the Supreme Court of Appeals of West Virginia who allowed the appeal. We are advised that this is the first appeal to this Court ever allowed by a presiding Judge of the Supreme Court of Appeals of West Virginia; because of that, the Judge presiding when the appeal was granted, made an exhaustive study of both this case, with which he was already familiar, and the authorities which allowed him to grant such an appeal.

Because of his familiarity with this case upon its original presentation in the Supreme Court of Appeals of West Virginia, upon its presentation for a rehearing and upon its presentation for the allowance of an appeal, this presiding officer was peculiarly fitted to pass upon the question as to whether the appeal should be allowed. Naturally, of course, this Court has the right to review the granting of an appeal by any court, or presiding officer of any court, below; but where a matter has been studied so exhaustively below, and the appeal was allowed only after that exhaustive study, and a memorandum of authorities sustaining the right of that presiding officer to grant the appeal was prepared and filed, wherein was stated the opinion that the granting of the appeal was within all of the rules prescribed by this Court, we respectfully submit that such finding should not be able to be successfully attacked on the ground that the appeal was allowed frivolously, and that no substantial question was raised.

We therefore again submit, this case is properly before this Honorable Court.

CONCLUSION

Therefore we respectfully urge this Court to reverse the decision and judgment below, and affirm the judgment and order of the County Court of Kanawha County, heretofore rendered in favor of these appellants.

Respectfully submitted,

KOONTZ & KOONTZ, J. CAMPBELL PALMER, III,

Counsel for Appellants.